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No. 88-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ADAMS FRUIT COMPANY, INC.,

Petitioner,

v.

RAMSFORD BARRETT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF OF THE AMICUS CURIAE CALIFORNIA WORKERS' COMPENSATION INSTITUTE IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

I. INTEREST OF THE AMICUS CURIAE 1

II. SUMMARY OF ARGUMENT 1

III. ARGUMENT 2

THE PRESUMPTION AGAINST PRE-EMPTION IN AREAS WHERE A STATE LEGITIMATELY EXERCISES ITS POLICE POWER CANNOT BE OVERCOME IN THE INSTANT CASE 2

A. No conflict exists between the two statutes which overcomes the presuraption against pre-emption 4

B. The broad purpose behind the AWPA is to provide protection to migrant and seasonal agricultural workers and agricultural employers 6

C. The broad purpose behind state workers' compensation is to offer redress to every injured worker and to limit the exposure of the employer to liability for compensation 8

D. Congress specifically reconciled the two statutes by anticipating the interrelationship of the AWPA with state workers' compensation laws 11

IV. CONCLUSION 13

TABLE OF AUTHORITIES

	PAGE(S)
CASES	
Allen-Bradley Local No. 1111, etc. v. *Wisconsin E. R. Board*, 315 U.S. 740 (1942)	4
Barrett v. *Adams Fruit Co., Inc.*, 867 F.2d 1305 (11th Cir. 1989)	5
California v. *ARC America Corp.*, ___ U.S. ___, 109 S.Ct. 1661 (1989)	3
California Federal Sav. and Loan Ass'n v. *Guerra*, 479 U.S. 272 (1987)	2,3
DeCanas v. *Bica*, 424 U.S. 351 (1976)	3
Florida Lime and Avocado Growers, Inc. v. *Paul*, 373 U.S. 132 (1963)	4
Hillsborough County, Fla. v. *Auto. Med. Labs.*, 471 U.S. 707 (1985)	4,5
Johansen v. *United States*, 343 U.S. 427 (1952)	9,10
Jones v. *Rath Packing Co.*, 430 U.S. 519 (1977)	2
Malone v. *White Motor Corp.*, 435 U.S. 497 (1978)	2
Merrill Lynch, Pierce, Fenner & Smith, Inc. v. *Ware*, 414 U.S. 117 (1973)	8,12
New York State Dept. of Social Services v. *Dublino*, 413 U.S. 405 (1973)	8,11, 12,13
Patterson v. *United States*, 359 U.S. 495 (1959)	10
Rice v. *Santa Fe Elevator Corp.*, 331 U.S. 218 (1947)	3
Rose v. *Arkansas State Police*, 479 U.S. 1 (1986)	5,6
Shaw v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983)	2
Silver v. *New York Stock Exchange*, 373 U.S. 341 (1963)	12
United States v. *Demko*, 385 U.S. 149 (1966)	9,10

TABLE OF AUTHORITIES (Continued)

	PAGE(S)
CONSTITUTIONS	
U.S. Const. Art. VI	2
STATUTES	
29 U.S.C. §1801	6
29 U.S.C. §1821	6
29 U.S.C. §1823	6
29 U.S.C. §1841	4,6, 7,12
29 U.S.C. §1854	4,5,7
29 U.S.C. §1871	11
Fla. Stat. §440.12	5,7
Fla. Stat. §440.13	5,7
Fla. Stat. §440.15	5,7
OTHER AUTHORITIES	
1 A. Larson, *The Law Of Workmen's Compensation* §2.10 (1988)	8,9
1 A. Larson, *The Law Of Workmen's Compensation* §2.20 (1988)	8
1 A. Larson, *The Law Of Workmen's Compensation* §5.30 (1988)	10
1C A. Larson, *The Law Of Workmen's Compensation* §53.10 (1988)	11
2A A. Larson, *The Law Of Workmen's Compensation* §65.11 (1988)	9

I. INTEREST OF THE AMICUS CURIAE

The California's Workers' Compensation Institute is a non-profit research and educational organization. Its membership is limited to insurers who are authorized to write workers' compensation coverage, and its member insurers currently write ninety-five percent of the California statewide premium.

The California Workers' Compensation Institute is devoted to the maintenance of the California workers' compensation system and works where necessary to effect administrative, regulatory and statutory changes. The Institute is interested in preserving the integrity of the workers' compensation system and the basic philosophy upon which compensation rests.

II. SUMMARY OF ARGUMENT

The implementation of a workers' compensation system is within the traditional police powers of a state. As such there is a presumption against pre-emption of a state statute created as an exercise of this police power.

The Eleventh Circuit Court of Appeals incorrectly decided that the Migrant and Seasonal Agricultural Workers' Protection Act (AWPA) pre-empted the Florida workers' compensation statute. Consideration of the aforesaid presumption against pre-emption compels the finding that preemption is not appropriate in this case.

A strong conflict must exist between the two statutes in order to overcome the presumption. No such conflict exists in the instant case in that both statutes provide for redress to injured workers.

One difference between the two statutes is that under the state system, workers' compensation becomes the injured worker's exclusive remedy. The exclusivity of workers' compensation is a basic underpinning of a no-fault compensation system and is crucial to the balance of the system. The

employer accepts liability for all industrial injuries, without regard to fault, and the worker is assured of rapid medical treatment and compensation, but foregoes the right to sue the employer for personal injury.

In order for a state to legislate that employers must accept liability for all work-related injuries without regard to fault, it is essential that the employer's exposure be limited to compensation rather than liability based on tort concepts. The formulation of such a system is a valid exercise of the state's police power. Coupled with the fact that Congress has provided within the AWPA for the substitution of workers' compensation insurance for liability insurance, and that both systems seek to compensate injured workers, the federal statute clearly does not pre-empt the state's exercise of its police power.

III. ARGUMENT

THE PRESUMPTION AGAINST PRE-EMPTION IN AREAS WHERE A STATE LEGITIMATELY EXERCISES ITS POLICE POWER CANNOT BE OVERCOME IN THE INSTANT CASE

The Supremacy Clause of the United States Constitution provides that Congress may pre-empt an area of the law. U. S. Const. Art. VI. In order to determine if state law is pre-empted by federal law, the only inquiry is to determine the intent of Congress. *California Federal Sav. and Loan Ass'n* v. *Guerra*, 479 U.S. 272, 280 (1987), *citing Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 95 (1983), and *Malone* v. *White Motor Corp.*, 435 U.S. 497, 504 (1978).

In *California Federal*, this honorable Court set out the three ways that federal law may pre-empt state law. First, Congress may pre-empt state law by expressly stating the pre-emption. *California Federal*, 479 U.S. at 280, *citing Jones* v. *Rath Packing Co.*, 430 U.S. 519 (1977). Second, the intent to pre-empt state law may be inferred when the "scheme of

federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulations." *California Federal*, 479 U.S. at 281, *citing Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Third, even if Congress has not completely displaced state law, " . . . federal law may nonetheless pre-empt state law to the extent it actually conflicts with federal law." *California Federal*, 479 U.S. at 281.

In its decision below, the Eleventh Circuit Court of Appeals found that the first two bases for pre-emption were not present, but that the state statute was pre-empted on the third basis. The Eleventh Circuit did not address the presumption that state law is not to be pre-empted in an area traditionally regulated by the states. In *California* v. *ARC America Corp.*, __ U.S. __, 109 S.Ct. 1661 (1989), this Court noted that the appellees therein "must overcome the presumption against finding pre-emption of state law in areas traditionally regulated by the States." *Id.* at 1665. A state's regulation of an employer's liability and an employee's corresponding remedy is a valid and well-recognized exercise of a state's police power. The presumption of the validity of Florida's workers' compensation laws cannot be overcome in this case.

This Court has held, "When Congress legislates in a field traditionally occupied by the States, 'we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was a clear and manifest purpose of Congress.'" *Id.* at 1665, *quoting Rice*, 331 U.S. at 230.

This Court has previously indicated that within the police power of a state is the authority to regulate the employment relationship in order to protect workers in that state and that this includes the authority to promulgate workers' compensation laws. *DeCanas* v. *Bica*, 424 U.S. 351, 356 (1976). The presumption against pre-emption where states' police powers are involved has been discussed by this Court in many

cases. *See Allen-Bradley Local No. 1111, etc.* v. *Wisconsin E. R. Board*, 315 U.S. 740, 749 (1942); *Florida Lime and Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 146 (1963); *Hillsborough County, Fla.* v. *Auto. Med. Labs.*, 471 U.S. 707, 715 (1985).

In *Hillsborough* local ordinances governing blood plasma collection were challenged as being pre-empted by federal regulations which set minimum standards on the collection of plasma. This Court set out the additional presumption against pre-emption under the state's police power and stated:

> Appellee must thus present a showing of implicit pre-emption of the whole field, or of a conflict between a particular local provision and the federal scheme, that is strong enough to overcome the presumption that state and local regulation of health and safety matters can constitutionally coexist with federal regulation.

Id. at 716.

A. No conflict exists between the two statutes which overcomes the presumption against pre-emption.

In the case at bar the question of implicit pre-emption is not at issue but rather whether there is a conflict between the two statutory schemes that can overcome the presumption in favor of the state's police power. No such conflict is present between the Florida and federal statutes. The AWPA provides several protections for agricultural workers including motor vehicle safety standards. 29 U.S.C. §1841. In addition, it provides that for any violations of the AWPA a person aggrieved may bring a private right of action in federal district court. 29 U.S.C. §1854.

In the instant case respondents, a group of farm workers, were injured in an automobile accident during their employment and received workers' compensation benefits. More than one year later they brought private actions under AWPA

Section 1854. The district court ruled that inasmuch as they had received Florida workers' compensation benefits, workers' compensation was their exclusive remedy; and, therefore, they were precluded from using the federal statute's private right of action. The Eleventh Circuit Court of Appeals reversed the lower court, holding that AWPA Section 1854 pre-empted the exclusive remedy provision of the Florida statute. *Barrett* v. *Adams Fruit Co., Inc.*, 867 F.2d 1305 (11th Cir. 1989).

The court of appeals failed to consider the presumption against pre-emption in an area involving a state's police powers. The court did not examine the statutes to determine if a strong enough conflict exists between the two to overcome the presumption, as this Court did in *Hillsborough*. 471 U.S. at 716.

In the interplay between the two statutes no overwhelming conflict exists because the underlying purpose of compensating the injured worker has been achieved. Under the Florida workers' compensation system the injured workers received the necessary medical attention, disability payments, if applicable, and compensation for lost wages. *See* Fla. Stat. §§440.12, 440.13 and 440.15. In this sense the necessary protection of the migrant and seasonal agricultural workers has been achieved in that they have received medical treatment and compensation for bodily injuries resulting from motor vehicle accidents.

A head-on conflict between the two statutory schemes does not exist in this case. In *Rose* v. *Arkansas State Police*, 479 U.S. 1 (1986) a head-on conflict between the Public Safety Officers' Death Benefits Act and the Arkansas Workers' Compensation Act existed. In that case the widow of a state trooper received a $50,000.00 benefit under the federal act which provided that the benefit was in addition to any other benefit from any other source. *Id.* at 2. Under the Arkansas workers' compensation system the widow applied for death benefits and the Arkansas Insurance Department

agreed the claim was compensable but indicated that the state compensation owed was to be reduced by the amount of the federal benefit. In that case there was a direct conflict between the two statutes since the federal statute clearly provided for an *additional* benefit and the state statute was invalidated. *Id.* at 3. No such conflict is posed in the instant case because the broad purpose of the federal act is served by the benefits of the workers' compensation system. The injured worker would not be able to pursue a private action for bodily injury in federal court but would still have the private right of action for other violations of the AWPA.

B. The broad purpose behind the AWPA is to provide protection to migrant and seasonal agricultural workers and agricultural employers.

The AWPA provides certain protections for migrant and seasonal agricultural workers including information and record keeping requirements (29 U.S.C. §1821), safety and housing requirements (29 U.S.C. §1823), and motor vehicle safety (29 U.S.C. §1841), to name some of the provisions of the AWPA. The statement of Congressional purpose provides:

> It is the purpose of this chapter to remove the restraints on commerce caused by activities detrimental to migrant and seasonal agricultural workers; to require farm labor contractors to register under this chapter; and to assure necessary protections for migrant and seasonal agricultural workers, agricultural associations, and agricultural employers.

29 U.S.C. §1801.

In providing for motor vehicle safety, Congress established that when transporting migrant or seasonal agricultural workers, employers are required to have in place an insurance policy or liability bond which insures the employer for liability against personal injury or property damage. 29 U.S.C. §1841(b)(1)(C). Additionally, if an employer has state workers' compensation coverage then no insurance policy or liability bond is required when workers are transported under circumstances where there is coverage under the state workers' compensation law. 29 U.S.C. §1841(c)(1). By this section Congress has recognized that workers' compensation insurance can be substituted for liability insurance. The recognition of workers' compensation insurance would imply that Congress has then recognized the attendant workers' compensation system including its exclusive remedy provision.

In Section 1854 of the AWPA Congress created a private right of action for anyone aggrieved by a violation of the chapter. Those violations can include simple record keeping violations or any of a number of statutory violations. When viewed as a whole the AWPA provides migrant and seasonal workers with various protections including motor vehicle safety. The motor vehicle safety provision, 29 U.S.C. §1841, provides safety standards and also provides that there shall be insurance coverage when transporting workers whether that be through an insurance policy, liability bond or workers' compensation insurance. In essence, the broad purpose of the AWPA in the event of a motor vehicle accident causing bodily injury to a migrant or seasonal agricultural worker is to provide redress for that injury.

By the same token the state workers' compensation system provides the same type of redress for bodily injury. Under the Florida workers' compensation system, these injured workers received medical treatment, disability payments, if applicable, and lost wages. *See* Fla. Stat. §§440.12, 440.13, and 440.15. Having received the benefit of the workers' compensation system, however, workers' compensation became the workers' exclusive remedy. Because compensation was their exclusive remedy they were then precluded from pursuing the private right of action included within AWPA. Nevertheless, these two statutes can be reconciled in

that the injured workers received the protection generally conceived by the AWPA, namely redress for injury.

C. The broad purpose behind state workers' compensation is to offer redress to every injured worker and to limit the exposure of the employer to liability for compensation.

In reconciling these two statutes the Court should also look at the interest of the state in establishing a workers' compensation system. In its decision against pre-emption in *New York State Dept. of Social Services* v. *Dublino*, 413 U.S. 405 (1973), this Court commented on the legitimate state interest involved in encouraging its citizens capable of working to do so. 413 U.S. at 413. In *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Ware*, 414 U.S. 117 (1973), this Court also commented on California's strong policy of protecting its wage earners. 414 U.S. at 139. In the case of workers' compensation, the state's policy interest is in providing benefits, both medical and financial, to its injured workers. "The ultimate 'social philosophy,' then, behind nonfault compensation liability is the desirability of providing, in the most efficient, most dignified, and most certain form, financial and medical benefits which an enlightened community would feel obliged to provide in any case in some less satisfactory form, and of allocating the burden of these payments to the most appropriate source." 1 A. Larson, *The Law Of Workmen's Compensation* §2.20, at 7 (1988).

In order to qualify for workers' compensation benefits the worker need only demonstrate an injury connected to employment. The concepts of negligence and fault do not enter into the compensation system and do not affect the workers' recovery. Professor Larson has stated, "Let the employer's conduct be flawless in its perfection, and let the employee's be abysmal in its clumsiness, rashness and ineptitude: if the accident arises out of and in the course of the employment, the employee receives his award. Reverse the positions, with a careless and stupid employer and a wholly

innocent employee: the same award issues." 1 A. Larson, *supra*, §2.10, at 5. By this system, the injured worker is compensated and need not be concerned with proving liability or fault. By the same token, the employer is responsible for all work related injuries even if the employer is entirely innocent of any fault in causing those injuries.

In order to effect this trade-off, where the employer accepts responsibility for all work-related injuries and the employee does not have to show anything more than an injury arising out of the course of employment, this system becomes the employee's exclusive remedy. "This is part of the *quid pro quo* in which the sacrifices and gains of employees and employers are to some extent put in balance, for, while the employer assumes a new liability without fault, he is relieved of the prospect of large damage verdicts [footnote omitted]." 2A A. Larson, *supra*, §65.11, at 12-1, 12-9. In the balance the worker receives prompt medical treatment and benefit payments without time-consuming litigation. In a normal personal injury suit the worker could be forced to wait years before receiving reimbursement for those medical costs and lost wages and of course must deal with the problems of proof and of overcoming the defenses of civil litigation. As opposed to this time consuming and uncertain process, the worker is entitled to immediate treatment and benefits under the workers' compensation laws. This Court has commented when discussing workers' compensation systems:

> Historically, workmen's compensation statutes were the offspring of a desire to give injured workers a quicker and more certain recovery than can be obtained from tort suits based on negligence and subject to common-law defenses to such suits. Thus, compensation laws are practically always thought of as substitutes for, not supplements to, common-law actions. A series of comparatively recent cases in this Court has recognized this historic truth and ruled accordingly. *Johansen* v. *United States*, 343

> U.S. 427, 72 S.Ct. 849, 96 L.Ed. 1051, and *Patterson* v. *United States*, 359 U.S. 495, 79 S.Ct. 936, 3 L.Ed.2d 971, for instance, are typical of the recognition by this Court that the right of recovery granted groups of workers covered by such compensation laws is exclusive. Such rulings of this Court have established as a general rule the exclusivity of remedy under such compensation laws [footnote omitted].

United States v. *Demko*, 385 U.S. 149, 151 (1966).

The exclusivity of the workers' compensation remedy is undoubtedly essential to the operation of the system. The employer is forced to compensate its workers for all industrial injuries regardless of whether the employer is at fault, but at the same time the employer is assured that workers' compensation is its only liability to workers. Accordingly, employers are able to insure their workers' compensation coverage but do not have the burden of insuring against liability cases by employees arising from the same injuries.

In enacting workers' compensation statutes states have a strong policy interest in providing speedy recovery to their injured workers whatever the cause of the industrial injury, but at the same time in providing employers with the protection that they will not be exposed to further lawsuits beyond workers' compensation claims.

In the instant case Congress has recognized the balancing between private tort actions and workers' compensation systems by providing that in motor vehicle matters, if workers' compensation coverage applies, no other insurance need be obtained. This is a clear indication by Congress that it meant to balance the existing states workers' compensation systems with the overall protection of migrant and seasonal agricultural workers.

All states currently have workers' compensation acts in effect. *See* 1 A. Larson, *supra*, §5.30, at 39. However, not all

states' compensation acts apply to agricultural labor. In fact in 1985 eleven states excluded farm labor from their compensation statutes. 1C A. Larson, *supra*, §53.10, at 9-189. In these states the AWPA private right of action would provide redress to those workers. However, in those states where a migrant or seasonal worker is injured such as he is covered by the state workers' compensation act, that act would be the worker's exclusive remedy against the employer. Inasmuch as Congress has recognized workers' compensation coverage for bodily injury in motor vehicle claims, the states' policy in creating the exclusive remedy as part of the compensation system should be left to coexist with the federal statute. To do otherwise does great violence to the underpinnings of the compensation system and leaves employers with an uninsured loss.

D. Congress specifically reconciled the two statutes by anticipating the interrelationship of the AWPA with state workers' compensation laws.

In discussing the "clear and manifest" requirement of Congress' intent to supersede the state power, this Court has stated, "If Congress had intended to pre-empt state plans . . . such intentions would in all likelihood have been expressed in direct and unambiguous language". *New York* v. *Dublino*, 413 U.S. at 405. No language in the AWPA indicates Congress intended to pre-empt the exclusivity provisions of state workers' compensation laws. Rather the statute specifically provides that it is intended to supplement state law. 29 U.S.C. §1871.

In *New York* v. *Dublino* this Court dealt with the question of whether provisions of the Social Security Act outlining work incentive programs pre-empted the work rules of the State of New York for people participating in Aid to Families With Dependent Children (AFDC). 413 U.S. at 406-07. The state had enacted work rules which required recipients of public assistance to participate in efforts at employment both

through reporting systems and public works projects. If someone defined as employable failed to comply with the requirements of the work rules they would be ineligible for assistance. The Social Security Act also required that state AFDC plans provide manpower services, training and other features as a condition to receiving assistance. Upon a challenge by some of the recipients of assistance the district court found the Social Security Act pre-empted the state work rules. This Court could not find Congress' clear manifestation of intent to pre-empt and found that the state work rules were not pre-empted by federal law. *Id.* at 422.

In examining whether California law which precluded compulsory arbitration of wage disputes was pre-empted by federal regulation, this Court commented "our analysis is also to be tempered by the conviction that the proper approach is to reconcile 'the operation of both statutory schemes with one another rather than holding one completely ousted.' " *Merrill Lynch*, 414 U.S. at 117, *quoting Silver* v. *New York Stock Exchange*, 373 U.S. 341 (1963). When viewed as to their broad purposes the statutory schemes involved in this case can be reconciled.

In addition to the motor vehicle safety provision of the AWPA, Congress has provided in Subsection (c) of 29 U.S.C. Section 1841 that if an agricultural employer provides workers' compensation coverage for bodily injury or death for migrant or seasonal agricultural workers, no insurance policy or liability bond is required if the workers are transported under circumstances where there is coverage under the state workers' compensation law. In this provision Congress has made an explicit incorporation of the state workers' compensation law into the workings of the AWPA. This section, in essence, instructs employers that if they have workers' compensation insurance that covers their migrant and seasonal workers, there is no need for an additional insurance policy or liability bond in the case of bodily injury or death resulting

from motor vehicle accidents. The fact that the workers' compensation forum then becomes the injured worker's exclusive forum does not conflict with the federal statute.

This Court has explained, "The subjects of modern social and regulatory legislation often by their very nature require intricate and complex responses from the Congress, but without Congress necessarily intending its enactment as the exclusive means of meeting the problem [citation omitted]." *New York* v. *Dublino*, 413 U.S. at 415.

The AWPA is indeed a complex response from Congress but the fact that it is intended to supplement the states' laws and makes specific provisions relating to workers' compensation insurance indicates that the private right of action under the AWPA is not the only solution to the problem of redress for bodily injury. Rather Congress seemed to recognize and provide for the substitution of workers' compensation. It is entirely consistent with this Congressional scheme that workers' compensation be the injured worker's exclusive remedy.

IV. CONCLUSION

The Florida workers' compensation statute was created by the state under an exercise of its police powers. As such there is an additional presumption against pre-emption of this state's statute. In this instance there is not a strong enough showing of a conflict between the federal statute and the state statute in order to justify pre-emption. Moreover, the two statutes can be reconciled when viewed for the broad purpose of providing redress to injured workers. Additionally, preserving the state's police power in its enactment of workers' compensation laws should be of paramount consideration. Certainly, the presumption of preservation of a state's police power has not been rebutted by any analysis. Accordingly, the decision of the Court of Appeals for the

Eleventh Circuit should be vacated and the decision of the United States District Court for the Middle District of Florida reinstated.

Respectfully submitted,

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